



AMENDED CLAUSE 4.6 TO CLAUSE 4.3 OF CANTERBURY LEP 2012  
EXCEPTIONS TO DEVELOPMENT STANDARDS - **HEIGHT VARIATION**

Demolition of existing structures and erection of a mixed-use development

918-936 CANTERBURY ROAD, ROSELANDS

SUBMITTED TO

CITY OF CANTERBURY BANKSTOWN

PREPARED BY

ABC PLANNING PTY LTD

MAY 2018

**CANTERBURY LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This amended Clause 4.6 submission has been prepared to accompany the additional information submitted to City of Bankstown Canterbury Council by ABC Planning Pty Ltd in relation to the amended plans for DA-462/2016. Amendments to the plans include the addition of rooftop private open space areas associated with apartments A405 and B404 as well as the provision of additional clerestory windows. These elements breach the maximum LEP height limit and are therefore have been included in this amended clause 4.6 variation request.

The proposal seeks a variation to the development standard contained within clause 4.3 of the *Canterbury LEP 2012* - maximum height of 18m.

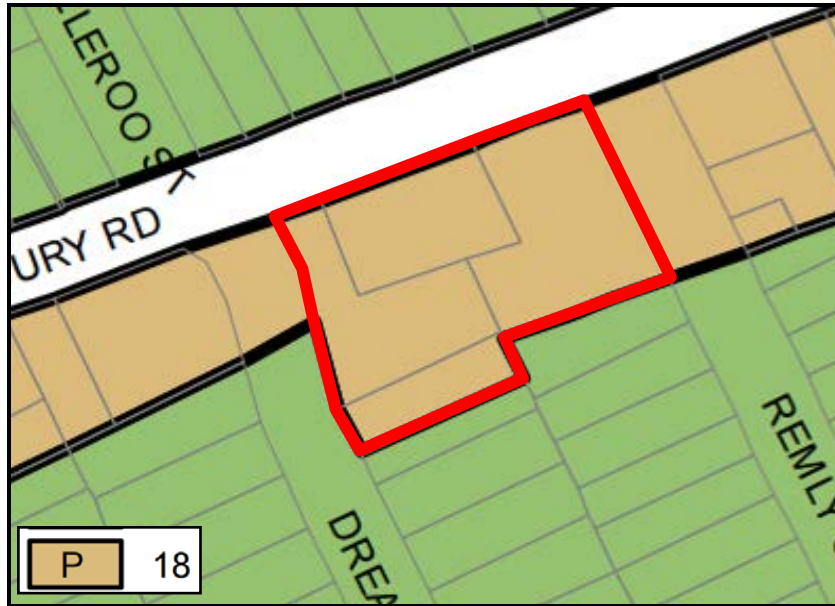
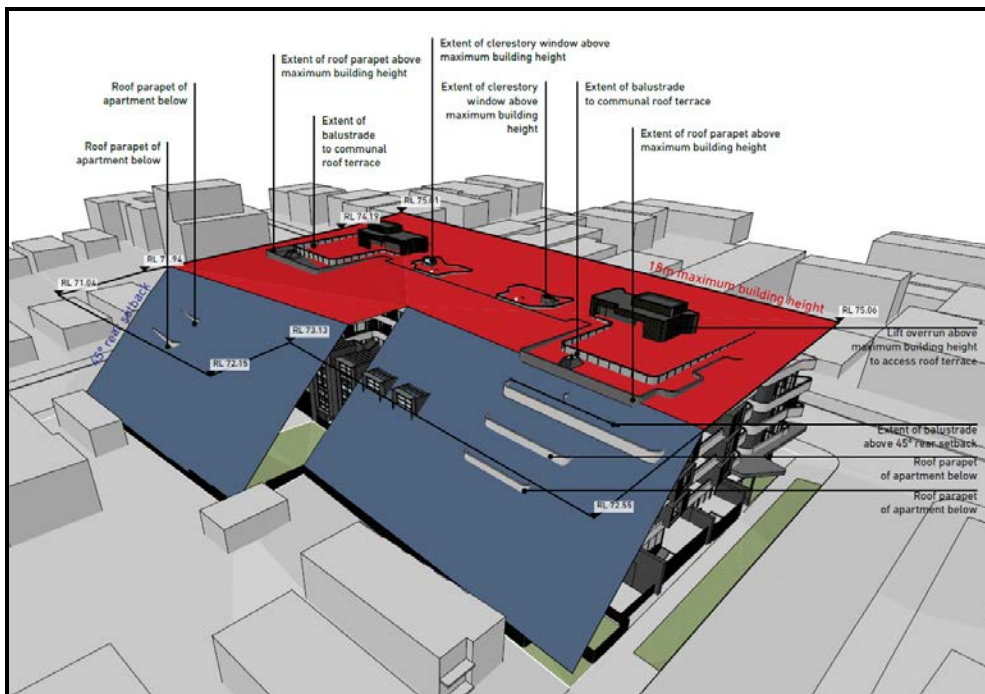


Figure 1: Building Height

The majority of the proposal is compliant with the 18m LEP height standard. The lift overrun components associated with the proposed roof terrace breach the 18 height limit by 3.33m. The lift overruns represent an isolated and centrally located portion of the overall roof and building footprint and are indiscernible from Canterbury Road.

A small section of the roof parapet to the rear of the development also breaches the LEP height limit as well as a portion of the proposed additional rooftop private open space areas associated with apartments A405 and B404 and the proposed new clerestory windows. These breaches are minor very minor.

The extent of the height variation is demonstrated in the height plane diagram below:



**Figure 2: Height plane diagram showing the extent of the height variation associated with the top of the lift overruns and rear sections of parapet**

As demonstrated by the above diagram, the areas of height variation are generally centrally located within the building footprint and the height breach does not apply to a whole level, therefore the proposal does not translate to a wholesale departure from the LEP standard.

This submission contends that strict compliance with the maximum height limit of 18m is unreasonable and/or unnecessary in this instance and that this Clause 4.6 exception to the development standard should be upheld for the following reasons:

- The height breach is due to varying ground levels and particularly due to the 2.7m slope of the site from north down to south at the eastern end of the site.
- The additional height is also attributed to a greater retail floor-to-floor height of 4m, allowing a floor to ceiling height which offers greater flexibility and amenity.
- The proposed top level is now under the LEP height limit at the Canterbury Road frontage, being 16.8m.
- The majority of the proposal complies with the building envelope provisions of the CDCP 2012.
- The proposal redistributes the potential permissible FSR further away from the adjoining residential dwellings to the south of the subject site and thereby provides for reduced visual bulk and amenity impacts when compared with a compliant development
- The variation provides for a better planning outcome through the provision of high quality communal areas which will receive abundant sunlight (in excess of the ADG requirement) in contrast to the ground level communal areas. The addition of rooftop private open space areas associated with apartments A405 and B404 allow these units to enjoy private open spaces that will receive sunlight throughout the day. The additional clerestory windows also allow solar access and daylight to penetrate those apartments.

- There are no unreasonable or additional adverse impacts generated by the height variation in regard to overshadowing, privacy or view loss, noting that the rooftop terraces allow for expansive district views
- The additional height also has no unreasonable streetscape outcomes. The proposed height is appropriate for its expansive main road frontage and is also consistent with numerous developments that have been recently completed or which are under construction along Canterbury Road.

Overall, it is considered that the proposed height meets the objectives of the LEP height standard and the objectives of the B5 Business Development zone. The height variation provides for a better planning outcome and there are sufficient environmental planning grounds to permit the variation.

#### **Clause 4.6 Exceptions to development standards**

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Director-General has been obtained.*

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

# 1. Consistency with the objectives of the height standard in the LEP

The following assessment addresses each of the relevant criteria under Clause 4.3:

## Clause 4.3 Height:

*The objectives of this clause are as follows:*

- a. *to establish and maintain the desirable attributes and character of an area,*

**Assessment:** The LEP and DCP provide for a suite of controls which seek to establish a new character for the subject site and along Canterbury Road in general. The 18-metre height limit envisages a bulk and scale of typically 6-storeys along with a building height plane which steps down to the lower density R3 Medium density zoned land to the south/rear.

The proposed development is consistent with the desired future character by generally adhering to the 18-metre height limit as shown on the street elevation below:



Figure 3: Canterbury Road street elevation showing the top floor is below the 18m height limit.

The rooftop elements are substantially recessed from Canterbury Road (over 6m) and would not be readily evident from the primary frontage or secondary frontages, as shown in the following montages and perspectives:





Figure 4: Montage taken from street level shows that the upper level components would not be evident from the primary street frontage of Canterbury Rd and presents as 4 levels which also minimises the scale of the building

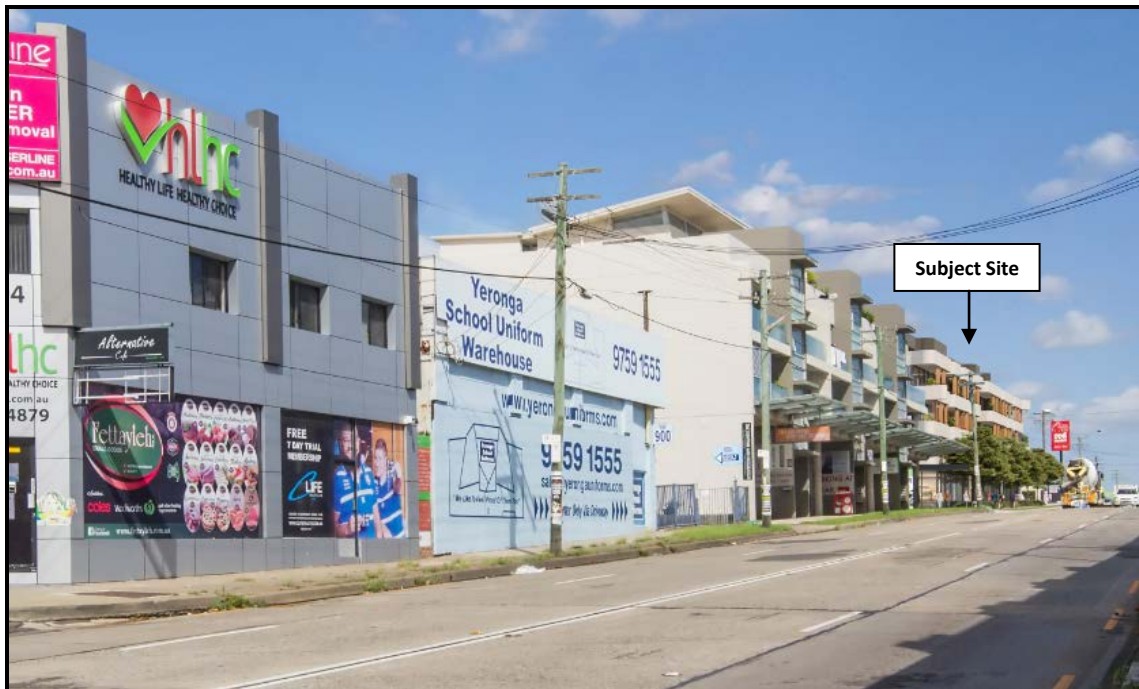


Figure 5: Perspective from 100m to the east of the site on Canterbury Road demonstrating that the height variation is indiscernible



**Figure 6: View from Remly Street (L) and Dreadnought Street (R) looking at the rear of the proposal**

Importantly, the rear component of the development is setback far greater than required or than if the sites were developed independently. This is demonstrated on the section below taken through the highest section of the building.



**Figure 7: Cross section through the middle of the building which shows that the majority of the built form is well within the building height plane whilst also demonstrating the recessed and minor nature of the portions of the building which breach the height plane**

The proposed development is consistent with numerous other approvals of 5 and 6 storey developments along this section of Canterbury Road. Most recently, a 5-storey mixed use development was approved at 1236-1244 Canterbury Road (DA-338/2014/A) which was granted a 1.73m height variation above the 18m maximum. Like this application, the height breach was attributed to lift overruns.

On this basis, the proposed height variation maintains and establishes the desirable attributes and character of the area by providing for a scale of development along Canterbury Road which is consistent with the controls and with numerous recent approvals for 5 and 6-storey mixed use developments, whilst also maintaining the amenity and outlook of the neighbouring properties in the R3 Medium Density zone to the south.

- b. to minimise overshadowing and ensure there is a desired level of solar access and public open space,

**Assessment:** The shadow impacts of the proposed amended development comply with the DCP and ADG requirements and have no greater impact compared with a development that complies with the height control for the site. This is achieved by providing an increased setback from the rear whilst the U-shape layout also minimises the potential bulk and scale (and potential shadow impacts) that could have been provided in the middle of the site.

The demolition of the existing 2-storey building which is located on the southern end of the site on the Remly Street frontage improves solar access during the morning hours to the residential flat building to the south, with the existing relationship shown below:



**Figure 8: Photo of existing relationship whereby demolition of the existing building and increased rear setback improves solar access in the morning to the eastern and northern openings during the morning hours (as shown on the shadow diagrams between 9am and 11am on June 21)**

Similarly, the proposed shadow outcomes for the dwelling on the Dreadnought Street frontage is consistent with the shadows cast by the existing building. Importantly, the accompanying shadow diagrams show that the additional height is so far removed from the southern neighbour that the additional height is not responsible for any greater shadow impacts than a compliant development.





**Figure 9:** The proposed shadow outcome is consistent with that which is generated by the existing building, noting that the parking on the southern side of the site will be replaced with a large area of deep soil planting.

The proposed two end returns of the building along the respective secondary street frontages have been reduced in length to comply with the rear setback requirements which confirms the reasonable nature of the proposal. If the sites were developed independently, the building height plane could extend across the entire length of the site which would have far greater shadow impacts. This demonstrates the benefit of the amalgamated site approach and the reasonableness of the proposal.

- c. to support building design that contributes positively to the streetscape and visual amenity of an area,*

**Assessment:** Design measures have been incorporated to minimise the impacts of height and bulk, including articulating and fragmenting the building façade and recessing the upper levels fronting Canterbury Road from the front of the building.

The building presents as 4-storeys when viewed obliquely as shown above in the montage.

The montage also demonstrates the vast streetscape improvement when compared with the existing buildings or if the sites were to be developed independently. If developed independently, there would be a series of exposed blade walls.

- d. to reinforce important road frontages in specific localities.*

**Assessment:** The contemporary design of the proposed mixed-use development significantly upgrades the built form presentation to Canterbury Road as desired by the LEP objectives. The additional height is limited to the two lift overruns and rear section of the roof slab. These are recessed from Canterbury Road, as desired by the DCP.

## 2. Consistency with the objectives of the B5 Business Development zone

### *Objectives:*

- To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
- To provide for residential use in conjunction with mixed use development to create an attractive streetscape supported by buildings with a high standard of design.
- To support urban renewal that encourages an increased use of public transport, walking and cycling.
- To encourage employment opportunities on Canterbury Road and in accessible locations.

**Assessment:** The proposed mixed-use development is consistent with the B5 Business Development zone objectives. The additional height contributes to additional communal open space which is a positive aspect of the proposal and assists in achieving the zone objectives.

The proposed mix of uses are also consistent with the objectives of the zone which seek to provide a range of retail and business uses which serve the needs of the community who live in the local area. The substantial retail space encourages employment opportunities in an accessible location such as the subject site. The provision of residential units on the site will encourage public transport use. The mixed use development will promote urban renewal and provide a more attractive development of the subject site.

Overall, it is considered that the proposed height will not generate any inconsistency with the zone objectives.

## 3. Consistency with State and Regional planning policies

**Assessment:** The proposed height variation ensures the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*. The proposed height allows for achievement of an appropriate increase in building envelope/density to a site that is highly accessible to public transport, employment, parks and general services. The provision of residential housing in close proximity to public transport and established services and recreation areas is consistent with the State Government Urban Consolidation Policy.

## 4. The variation allows for a better planning outcome

**Assessment:** It is considered that the proposed height variation represents a more desirable planning and urban outcome as the limited departure from the height standard allows for access to 2 high-quality rooftop terraces. The departure from the height control is primarily associated with lift overrun and the rear portion of the roof slab. Minor elements including new clerestory windows and a portion of the proposed new rooftop private open space areas associated with apartments A405 and B404 also breach the height limit.

The rooftop communal open space areas and private open space areas provide for better amenity than if it were confined to the ground level at the rear of the site. The rooftop location provides abundant solar access and access to views, compared with the ground level at the

rear. The isolated rooftop location from surrounding properties also ensures that utilisation of the communal area will not affect the amenity of dwellings either within or external to the subject proposal.

The recessed nature of the rooftop elements also ensures that there are no adverse streetscape impacts, whilst there will also be no adverse visual or acoustic privacy impacts generated due to the extreme distance of separation to the nearest neighbours to the south.

The U-shape design with 5 levels provides for a better layout for amenity in regard to internal solar access, daylight and natural ventilation opportunities, than if the 5 levels were provided over a greater building footprint. Such alternative would also reduce the degree of landscaping, separation internally between the buildings and have greater shadow and visual bulk impacts. The U-shape form of the building also results in 27% of the allowable DCP envelope not being used.

The additional clerestory windows allow the proposed the development to achieve compliance with the solar access requirements.

Therefore, it is considered that the additional height provides for a better amenity outcome than a potentially complying development.

#### 5. There are sufficient environmental grounds to permit the variation

**Assessment:** Outperformance of the internal amenity indicators within the DCP and ADG in relation to solar access and cross-ventilation demonstrate that there are sufficient environmental grounds to permit the variation. The height non-compliance does not compromise the internal performance of the units.

Externally, the lack of impact to surrounding properties as demonstrated above, particularly in relation to retention of solar access further displays the suitability of the proposed height variation in this instance. The height non-compliance will not be responsible for any greater shadowing to any surrounding property.

The height variation allows for compliance with the minimum required communal open space area for development and also the minimum required solar access to the communal open space area. A compliant height would not allow for the rooftop terraces, therefore the proposed development results in a better planning outcome.

The height variation also allows for compliance with the solar access requirements for units and private open space areas.

Furthermore, the height variation will not interfere with any views from surrounding properties. There will also be no adverse visual or acoustic privacy impacts generated by the additional height due to its recessed nature.

## 6. The variation is in the public interest

**Assessment:** The height variation is considered to be in the public interest given that it meets the objectives of the height standard and the objectives of the zone.

Given the proposal replaces a series of detracting built forms and uses with high quality residential and commercial units which achieve a high level of internal amenity and make efficient use of the site which is accessible to public transport, employment, parks and general services, the proposal is in the public interest. The appropriate bulk and scale along Canterbury Road, Remly Street and Dreadnought Street, and lack of external amenity impacts further demonstrates that the proposal and its associated height are in the public interest.

## **Conclusion**

For reasons mentioned herein, this amended Clause 4.6 variation is forwarded to Council in support of the mixed-use development proposal at 918-936 Canterbury Road, Roselands and is requested to be looked upon favourably by Council.